IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES MOSELEY, Appellant.	No. 38308-0-II UNPUBLISHED OPINION

Penoyar, J. — James Moseley appeals his attempted first degree arson conviction, arguing that the State failed to present sufficient evidence. Moseley also filed a statement of additional grounds (SAG) under RAP 10.10. Concluding that the State presented sufficient evidence and that Moseley's SAG issues lack merit, we affirm.[1]

FACTS

On December 14, 2007, Moseley was a McNeil Island Special Commitment Center resident. Employee Juan Camacho and "[P]sych [A]ssociate" Lance Anderson informed Moseley that he was going to be placed in more restrictive conditions. Report of Proceedings (RP) at 100. Moseley became upset and threatened to harm the staff. Anderson notified the Quick Response Team (QRT) of Moseley's threats. QRT moved Moseley to the Intensive Management Unit (IMU). When Camacho came to the IMU, he overheard Moseley tell Rehabilitation Counselor Terrell Smith, "Look what I'm going to do" or "I'm going to burn this room down." RP 103. Either Moseley or one of the IMU staff members called Smith to the window of Moseley's room to show him that Moseley had lit a blanket on fire. Camacho went to Moseley's door, but could

[1] A commissioner of this court initially considered Moseley's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

not see into the room because Moseley had placed toilet paper over the window. Camacho walked to the back of the IMU, where he was able to see into the back window of Moseley's room. He saw Moseley holding a blanket, and when Moseley saw him looking in, Moseley covered the window with a different blanket. Camacho noticed a burning smell coming from Moseley's room. Smith called the QRT to put the fire out and remove Moseley from his room. Moseley did not cooperate with the QRT's efforts to secure him. After several applications of pepper spray, Moseley stopped resisting and the QRT secured him. When staff entered Moseley's room, they found a blue blanket with burn marks, a match that fell out of the blanket, and some other matches.

The State charged Moseley with attempted first degree arson. The jury found him guilty as charged.

ANALYSIS

Moseley argues that the State failed to present sufficient evidence that he attempted to commit arson. Evidence is sufficient to support a conviction if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Thomas,* 150 Wn.2d 821, 874, 83 P.3d 970 (2004). An appellant claiming insufficiency of the evidence "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Thomas*, 150 Wn.2d at 874 (quoting *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

To convict a person of attempted first degree arson, the State must prove beyond a reasonable doubt that he committed an act that was "a substantial step toward" "[causing] a fire or explosion in any building in which there shall be at the time a human being who is not a

participant in the crime[.]" RCW 9A.28.020(1); RCW 9A.48.020(1)(c). Moseley argues that the State presented no evidence that he tried to cause a fire in the building. He contends that his crime was malicious mischief, not arson. While the fire from the blanket did not spread to other items in the room, a rational trier of fact could find that Moseley's act of setting the blanket on fire was a substantial step toward attempting to set a fire in his room. The State presented sufficient evidence.

Moseley claims in his SAG that: (1) his trial counsel was ineffective for not examining the blanket and matches before trial; (2) the State committed prosecutorial misconduct by withholding the blanket and matches until trial; and (3) the trial court allowed hearsay testimony. He does not show how he was prejudiced by either the State not making the blanket and matches available sooner or by his counsel not examining the blanket and matches sooner. Thus, he does not demonstrate ineffective assistance of counsel or prosecutorial misconduct. After review of the record, we find that the trial court did not allow inadmissible hearsay testimony. Moseley's SAG claims lack merit.

We affirm Moseley's conviction.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Penoyar, J.

We concur:

Van Deren, C.J.

Hunt, J.